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**IN THE
COURT OF APPEALS OF INDIANA**

ERIC E. FIELDS,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

[illegible]

No. 35A02-0604-CR-330

APPEAL FROM THE HUNTINGTON CIRCUIT COURT
The Honorable Mark A. McIntosh, Judge
Cause No. 35C01-0410-FC-70

October 6, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Eric E. Fields appeals from his conviction and sentence for Sexual Misconduct with a Minor,¹ a class C felony. Specifically, Fields raises the following arguments: (1) the trial court's failure to admonish the jury venire constituted fundamental error; (2) there is insufficient evidence supporting his conviction; (3) the trial court erred in weighing the aggravating and mitigating circumstances; and (4) Fields's sentence is inappropriate in light of the nature of the offense and his character. Finding no error, we affirm the judgment of the trial court.

FACTS

Sometime in July 2004, fourteen-year-old T.S. observed twenty-four-year-old Fields driving past her home in Huntington a number of times. After Fields stopped his vehicle, T.S. walked over to his car to talk to him. T.S.'s stepfather noticed the interaction and yelled at Fields that T.S. was only fourteen years old. Fields told T.S. that his name was Eric and gave her his cell phone number, which she did not write down. He then drove away.

On September 17, 2004, T.S. was sitting on her front porch with two of her friends and her brother. Her parents were not home. T.S. noticed Fields driving back and forth in front of her house. He finally stopped his vehicle and pulled into a neighbor's driveway. T.S. and her brother walked over to Fields's vehicle to talk with him. T.S.'s brother asked Fields if he would give them all a ride and Fields agreed but would only take "[o]ne at a time." Tr. p. 493, 552, 570, 579. T.S. said that she would go first and wanted one of her

¹ Ind. Code § 35-42-4-9(a).

friends to accompany her, but Fields refused, saying “[n]o. One at a time.” Id. at 493, 552, 571.

T.S. entered Fields’s vehicle alone, believing that they would just drive around the block, but instead Fields drove to a nearby park. He then turned to T.S., unfastened her seatbelt, and began kissing her. Fields took T.S.’s hand and moved it into his pants, making her touch his penis. She struggled to remove her hand, finally succeeded, and told Fields to take her home. Fields then put his hands under her shirt and fondled her breast. She again told him to stop and to take her home. Fields agreed and drove out of the park but did not drive in the direction of T.S.’s home. T.S. was frightened and repeatedly told Fields to take her home, but he refused to comply. When Fields stopped the vehicle at an intersection, T.S. unfastened her seatbelt, unlocked the door, and tried to open it. Fields grabbed her and a struggle ensued, but T.S. was eventually able to exit the vehicle, run across the street, and hide in some bushes.

After Fields finally drove away, T.S. ran home and told everyone what Fields had done. They went to the police station, where T.S. provided a description of Fields and his car. A few days later, T.S. identified Fields from a photographic array.

On October 11, 2004, the State arrested Fields and charged him with class C felony sexual misconduct with a minor. On December 6, 2005, during voir dire, the prospective jurors took a recess without first being admonished by the trial court. Fields did not object. Following the recess, the trial court questioned three members of the venire, two of whom said that they had discussed the case with one of the witnesses and one of whom said that she

knew Fields's mother, had heard about the case, and had discussed the case with friends. The trial court dismissed all three members of the venire. Voir dire continued and the remaining prospective jurors took one more recess. The trial court again failed to admonish the members of the venire and Fields again failed to object. On December 7, 2005, the jury found Fields guilty as charged.

On January 3, 2006, the trial court held a sentencing hearing, at which it found Fields's prior criminal history, consisting of a previous sex offense with a minor child, as the sole—and significant—aggravating factor. It found Fields's relatively young age and the fact that he had a young child to support as mitigating circumstances. The trial court found that the aggravator outweighed the mitigators and sentenced Fields to eight years, with four suspended, for a total executed sentence of four years. Fields now appeals.

DISCUSSION AND DECISION

I. Admonishment

Fields first argues that the trial court fundamentally erred in failing to admonish the venire prior to two recesses taken during voir dire. Initially, we observe that the statute requiring admonishments applies only to a jury after it has been selected and does not apply to a venire. Ind. Code § 35-37-2-4. Moreover, even if the trial court was required to admonish the venire before the recesses, Fields failed to raise an objection, which waives the argument on appeal. Lake v. State, 565 N.E.2d 332, 335 (Ind. 1991).

To work around his failure to object, Fields insists that the trial court's failure to admonish constituted fundamental error. A defendant raising fundamental error must

establish that the error was so prejudicial that he could not possibly have had a fair trial. Lacey v. State, 670 N.E.2d 1299, 1302 (Ind. Ct. App. 1991). Here, following the first recess, the trial court questioned the venire members and dismissed three prospective jurors who had knowledge of the case. Thus, Fields cannot establish that he was prejudiced as a result of the lack of an admonishment. Fields's mere speculation that other jurors who remained on the panel may have been prejudiced is insufficient to establish fundamental error. Consequently, we conclude that the trial court properly advised the venire.

II. Sufficiency of the Evidence

Fields next contends that the evidence is insufficient to support his conviction. Upon a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of witnesses. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). Rather, we consider only the probative evidence and reasonable inferences that may be drawn therefrom that support the verdict. Id. We will affirm a conviction unless no rational factfinder could have found the defendant guilty beyond a reasonable doubt. Clark v. State, 728 N.E.2d 880, 887 (Ind. Ct. App. 2000).

To prove Fields guilty of class C felony sexual misconduct with a minor, the State was required to establish that Fields, who was over twenty-one years of age, performed or submitted to any fondling or touching of either T.S., who was between fourteen and sixteen years old, or himself, with the intent to arouse or satisfy the sexual desires of either himself or T.S. See I.C. § 35-42-4-9(b)(1).

Fields argues that the uncorroborated testimony of T.S., standing alone, should not be sufficient to convict him. He acknowledges the well-recognized rule that a conviction may rest solely upon the uncorroborated testimony of the victim, even if the victim is a minor. McCarthy v. State, 749 N.E.2d 528, 538 (Ind. 2001); Spurlock v. State, 675 N.E.2d 312, 316 n.4 (Ind. 1996). Fields asks that we reconsider this longstanding rule. We decline that invitation and conclude that T.S.'s testimony is sufficient evidence to support Fields's conviction.

III. Sentencing

A. Balancing

Fields argues that the trial court erred in balancing the aggravator with the mitigating circumstances.² As we consider this argument, we observe that sentencing determinations are within the sound discretion of the trial court and that we will only reverse for an abuse of that discretion. Krumm v. State, 793 N.E.2d 1170, 1186 (Ind. Ct. App. 2003). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. Id.

² Fields analyzes this issue under the new statutory sentencing scheme enacted on April 25, 2005. Between the date of Fields's offense—September 17, 2004—and the date of sentencing—January 3, 2006—Indiana Code section 35-50-2-6 was amended to provide for an “advisory” rather than a “presumptive” sentence. We have already determined, however, that this change is substantive rather than procedural and that the new sentencing scheme should not be applied retroactively. Patterson v. State, 846 N.E.2d 723, 727 n.5 (Ind. Ct. App. 2006). Therefore, we will analyze Fields's sentencing arguments under the earlier presumptive sentencing scheme: “A person who commits a Class C felony shall be imprisoned for a fixed term of four (4) years, with not more than four (4) years added for aggravating circumstances or not more than two (2) years subtracted for mitigating circumstances.” Ind. Code § 35-50-2-6.

In a sentencing statement, a trial court must identify all significant aggravating and mitigating factors, explain why such factors were found, and balance the factors in arriving at the sentence. Bryant v. State, 841 N.E.2d 1154, 1156 (Ind. 2006). A trial court is not obligated to weigh a mitigating factor as heavily as the defendant requests. Smallwood v. State, 773 N.E.2d 259, 263 (Ind. 2002). A single aggravating factor may support the imposition of an enhanced sentence. Payton v. State, 818 N.E.2d 493, 496 (Ind. Ct. App. 2004), trans. denied.

Essentially, Fields contends that the trial court afforded too much weight to his prior criminal history, which consists solely of a misdemeanor conviction. But as noted by the trial court and the State, Fields's previous offense was a sex offense against a fifteen-year-old girl. In that case, the State dismissed a more serious charge in exchange for Fields's guilty plea to a class D felony, and Fields was ultimately sentenced to the alternative class A misdemeanor sentence upon his guilty plea. His prior conviction, therefore, involved circumstances that were markedly similar to those at issue herein. Fields failed to take advantage of the lenient treatment he received following his first conviction and has refused to conform his behavior to that expected by the law and society. Thus, the trial court properly concluded that Fields's criminal history is a significant aggravating factor. With respect to weighing the aggravator and mitigators, we again observe that the trial court was not obligated to weigh the mitigating circumstances as heavily as Fields requested. Consequently, we cannot say that the trial court abused its discretion in imposing Fields's sentence.

B. Appropriateness

Finally, Fields argues that the sentence imposed by the trial court is inappropriate in light of the nature of the offense and his character. See Ind. Appellate Rule 7(B). As to the nature of the offense, Fields made multiple attempts to make contact with T.S. and his attempts continued even after her stepfather informed him that she was only fourteen years old. He lured her into his vehicle alone, drove her to a secluded park, locked the doors, and proceeded to fondle her and force her to fondle him even though she said no. He ignored her repeated pleas to take her home, and T.S.'s own persistence, strength, and ingenuity are the only reasons she was able to escape.

As to Fields's character, his prior criminal history establishes his predilection for preying upon young girls to satisfy his sexual urges. He failed to learn from his prior conviction and has shown his unwillingness or inability to conform his behavior to social norms. Consequently, we conclude that his sentence is not inappropriate in light of the nature of the offense and his character.

The judgment of the trial court is affirmed.

VAIDIK, J., and CRONE, J., concur.